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 15 [Proposed] Counsel to the Official Committee  
 16 of Holders of Executory Contract Rights Through  
 17 USA Commercial Mortgage Company

E-Filed On May 26, 2006

10  
 11 **UNITED STATES BANKRUPTCY COURT**  
 12  
 13 **FOR THE DISTRICT OF NEVADA**

14 In re:  
 15 USA COMMERCIAL MORTGAGE COMPANY,  
 16

Case Nos.:  
 BK-S-06-10725-LBR  
 BK-S-06-10726-LBR  
 BK-S-06-10727-LBR  
 BK-S-06-10728-LBR  
 BK-S-06-10729-LBR

17 Debtor.  
 In re:  
 18 USA CAPITAL REALTY ADVISORS, LLC,  
 19

JOINTLY ADMINISTERED  
 Chapter 11

20 Debtor.  
 In re:  
 21 USA CAPITAL DIVERSIFIED TRUST DEED FUND, LLC,  
 22

OST REQUESTED  
 Date: June 5, 2006  
 Time: 9:30 a.m.

23 Debtor.  
 In re:  
 24 USA SECURITIES, LLC,  
 25

26 Affects:  
 27  All Debtors  
 28  USA Commercial Mortgage Company  
 USA Capital Realty Advisors, LLC  
 USA Capital Diversified Trust Deed Fund, LLC  
 USA Capital First Trust Deed Fund, LLC  
 USA Securities, LLC

27 **EX PARTE APPLICATION FOR ORDER SHORTENING TIME TO HEAR**  
 28 **APPLICATION OF THE OFFICIAL COMMITTEE OF HOLDERS OF EXECUTORIAL**  
**CONTRACT RIGHTS THROUGH USA COMMERCIAL MORTGAGE COMPANY TO**  
**EMPLOY GORDON & SILVER, LTD.**

1 The Official Committee of Holders of Executory Contract Rights Through USA  
2 Commercial Mortgage Company (the “Direct Lenders Committee”), by and through its proposed  
3 attorneys, the law firm of Gordon & Silver, Ltd., filed their Application of the Official  
4 Committee of Holders of Executory Contract Rights Through USA Commercial Mortgage  
5 Company to Employ Gordon & Silver, Ltd. (the “Application”). This Ex Parte Application for  
6 Order Shortening Time to Hear the Application is made and based upon Fed. R. Bankr. P. 9006,  
7 the following memorandum of points and authorities, the Affidavit of Talitha B. Gray, Esq. (the  
8 “Gray Affidavit”), the Attorney Information Sheet filed contemporaneously herewith, and the  
9 papers and pleading on file herein, judicial notice of which is respectfully requested.

10 WHEREFORE, Debtor respectfully requests that this Honorable Court grant this ex parte  
11 application and issue an order shortening time to hear the Application at the Omnibus Hearing on  
12 June 5, 2006 (the “June 5 Hearing”), and for such other and further relief as the Court deems just  
13 and proper.

14 DATED this 26<sup>th</sup> day of May, 2006.

GORDON & SILVER, LTD.

By:

~~GERALD M. GORDON, ESQ.  
GREGORY E. GARMAN, ESQ.  
TALITHA B. GRAY, ESQ.~~

## **POINTS AND AUTHORITIES**

**I.**  
**AFFIDAVIT OF TALITHA B. GRAY, ESO.**

23 STATE OF NEVADA )  
24 COUNTY OF CLARK )  
                          ) ss.

25 I, Talitha B. Gray, Esq., being first duly sworn, deposes and says:

26 1. I am over the age of 18, am mentally competent, have personal knowledge of the  
27 facts in this matter, and if called upon to testify, could and would do so.

28 2. I am an associate with the law firm of Gordon & Silver, Ltd., counsel for the

1 Direct Lenders Committee, in the above-captioned bankruptcy cases (the "Chapter 11 Cases")  
 2 and duly licensed to practice law in the State of Nevada.

3       3. On April 13, 2005 (the "Petition Date"), USA Commercial Mortgage Company  
 4 ("USA Mortgage"), USA Securities, LLC ("USA Securities"), USA Capital Realty Advisors,  
 5 LLC ("USA Realty"), USA Capital Diversified Trust Deed Fund, LLC ("USA Diversified"), and  
 6 USA Capital First Trust Deed Fund, LLC ("USA First" and, collectively with USA Mortgage,  
 7 USA Securities, USA Realty, and USA Diversified, the "Debtors") filed voluntary petitions for  
 8 relief under Chapter 11, Title 11 of the United States Code.

9       4. On May 10, 2006, the Office of the United States Trustee (the "US Trustee")  
 10 appointed the following four committees in the Chapter 11 Cases:

11       1. The Official Committee of Holders of Executory Contract Rights Through  
 12 USA Commercial Mortgage Company<sup>1</sup>;  
 13       2. The Official Unsecured Creditors Committee for USA Commercial  
 14 Mortgage Company;  
 15       3. The Official Committee of Equity Security Holders of USA Capital  
 16 Diversified Trust Deed Fund, LLC; and  
 17       4. The Official Committee of Equity Security Holders of USA Capital First  
 18 Trust Deed Fund, LLC.

19       5. The Direct Lenders Committee initially sought to retain the law firm of Stutman,  
 20 Treister and Glatt collectively with one or both of the fund committees. However, after  
 21 deliberating the issue at their first full meeting on May 23, 2006, the Direct Lenders Committee  
 22 has determined that joint representation is not in its best interest. As such, the Direct Lenders  
 23 Committee contacted Gordon & Silver, Ltd. ("G&S") late in the evening on May 23, 2006 and  
 24 expressed its desire to employ G&S as its counsel in the Chapter 11 cases.

25       6. An Omnibus Hearing has been scheduled for the June 5 Hearing at which time the  
 26 following motions and applications are scheduled will be heard:

27       (a) Application To Employ Shea & Carlyon, Ltd (Docket # 303);

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28       1 Notably, the Direct Lenders Committee represents the interests of approximately three thousand six hundred  
 29 parties-in-interest in the Chapter 11 Cases thereby necessitating their immediate and active involvement in the  
 30 reorganization process through their duly retained counsel.

- 1 (b) Application to Employ Stutman, Treister & Glatt as Counsel for Investor  
2 Committees for Matters of Common Interest (Docket # 280);
- 3 (c) Motion to Compel Debtor to Continue to Forward Lender Payments to  
4 Direct Lenders; Motion to Delay or Prohibit Appraisals on Performing  
5 Loans (Docket # 215);
- 6 (d) Motion for Relief from Stay Property: various real property with  
7 Certificate of Service (Affects USA Commercial Mortgage Co.) (Docket  
8 # 208);
- 9 (e) Direct Lenders' Motions: 1. To Compel Debtor To Continue To Forward  
10 Lender Payments To Direct Lenders; And 2. To Delay Or Prohibit  
11 Appraisals On Performing Loans (Affect USA Commercial Mortgage Co.)  
12 (Docket # 209);
- 13 (f) Motion for Authorizing Return of Non-Invested Funds (Docket # 194);
- 14 (g) Application to Employ Hilco Real Estate LLC/Hilco Real Estate  
15 Appraisal, LLC as Real Estate Appraiser (Affects All Debtors) (Docket  
16 # 172);
- 17 (h) Motion To Temporarily Hold Funds Pending A Determination Of The  
18 Proper Recipients, And Memorandum Of Points And Authorities (Affects  
19 All Debtors) (Docket # 173); and
- 20 (i) Motion for Order Authorizing Return of Non-Invested Funds (Docket  
21 # 155).

22 7. As this Court is well-aware, the Chapter 11 Cases are moving forward at an  
23 extraordinary pace and therefore it is critical that the Direct Lenders Committee's interests be  
24 thoroughly represented with regard to the numerous pending motions and applications. As such,  
25 it is necessary that the Application be heard at the June 5 Hearing.

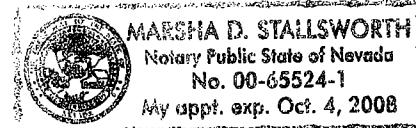
26 8. Notably, both the Office of the United States Trustee and counsel for the above-  
27 captioned Debtors have agreed to have the Application heard on shortened time.

28 DATED this 26<sup>th</sup> day of May, 2006.

29   
TALITHA B. GRAY, ESQ.

30 SUBSCRIBED AND SWORN to before me  
31 this 26<sup>th</sup> day of May, 2006.

32   
NOTARY PUBLIC



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**II.**  
**LEGAL ARGUMENT**

2

3       Section 105, Title 11 United States Code (the “Bankruptcy Code”) allows this Court to  
 4 issue such orders as are necessary to carry out the provisions of this title. Fed. R. Bankr. P.  
 5 9006(c)(1) generally permits a Bankruptcy Court, for cause shown and in its discretion, to reduce  
 6 the period during which any notice is given in accordance with the Bankruptcy Rules.  
 7 Bankruptcy Rule 9006(c)(1) provides as follows:

8           Except as provided in paragraph (2) of this subdivision, when an act is  
 9 required or allowed to be done at or within a specified time by these rules  
 10 or by a notice given thereunder or by order of court, the court for cause  
 shown may in its discretion with or without motion or notice order the  
 period reduced.

11 U.S.C. § 105. Local Rule 9006 provides further authority for shortening the time for a  
 12 hearing. According to Local Rule 9006(b), every motion for an order shortening time must be  
 13 accompanied by an affidavit stating the reasons for an expedited hearing. As set forth in the  
 14 Gray Affidavit, there is a compelling reason for an expedited hearing.

15           Local Rule 9006 requires the moving party to submit an Attorney Information Sheet  
 16 indicating whether opposing counsel was provided with notice, whether opposing counsel  
 17 consented to the hearing on an order shortening time, the date counsel was provided with notice  
 18 and how notice was provided or attempted to be provided. An Attorney Information Sheet was  
 19 filed contemporaneously with this ex parte motion.

20

**III.**  
**CONCLUSION**

21

22 WHEREFORE, the Direct Lenders Committee respectfully requests that this Honorable Court  
 23 grant this ex parte application and issue an order shortening time to hear the Application

24 ...

25 ...

26 ...

27

28

1 and for such other and further relief as the Court deems just and proper.

2 DATED this 26<sup>th</sup> day of May, 2006.

3 GORDON & SILVER, LTD

4 By:

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